No. 4075

United States

Circuit Court of Appeals

For the Ninth Circuit.

In the Matter of IRVING WHITEHOUSE COMPANY, a Corporation, Bankrupt.

L. C. REAM, HAZEL MOWERS, MABEL CONNOR, H. E. WOODLAND, MAUDE MOWERS, OSCAR LANTOR, CHARLES THEIS, ALEXANDER STEPHENS, O. W. WITTMER, T. S. LANE, DAVID ACKERMAN, STANLEY HODGMAN, and AUGUSTA W. HOWELL,
Petitioners and Appellants,

vs.

W. S. McCREA, as Trustee in Bankruptcy of the Estate of IRVING WHITEHOUSE COMPANY, a Corporation, Bankrupt,
Respondent and Appellee.

APPEAL FROM AND PETITION FOR REVISION

Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, of an Order of the United States District Court for the Eastern District of Washington, Northern Division.

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vs.

W. S. McCREA, as Trustee in Bankruptcy of IRVING WHITEHOUSE COMPANY, a Corporation, Bankrupt,

Respondent.

Petition for Revision

Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, an Order of the United States District Court. for the Eastern District of Washington, Northern Division.

INDEX FOR PETITION FOR REVISION.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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United States Circuit Court of Appeals for the Ninth Circuit.

IN BANKRUPTCY—No. ——.

In the Matter of IRVING WHITEHOUSE COMPANY, a Corporation,

Bankrupt.

L. C. REAM, HAZEL MOWERS, MABEL CONNOR, H. E. WOODLAND, MAUD MOWERS, OSCAR LANTOR, CHARLES THEIS, ALEXANDER STEPHENS, O. W. WITTMER, T. S. LANE, DAVID ACKERMAN, STANLEY HODGMAN, AUGUSTA W. HOWELL,

Petitioners,

vs.

W. S. McCREA, as Trustee in Bankruptcy of IRVING WHITEHOUSE COMPANY, a Corporation, Bankrupt,

Respondent.

Petition to Revise in Matter of Law.

To the Honorable Judges of the Circuit Court of Appeals of the Ninth Circuit of the United States:

Your petitioners respectfully show:

I.

That W. S. McCrea is the duly qualified and acting Trustee in Bankruptcy of the estate of Irving Whitehouse Company, bankrupt, which was so adjudged a bankrupt in the District Court of the

United States for the Eastern District of Washington, Northern Division, on the 2d day of December, 1921.

II.

That on August 3, 1921, a receiver was appointed for the bankrupt by the Superior Court of the State of Washington in and for the County of Spokane; that on this day Hutton & Company of New York City, brokers, held as collateral securities deposited by the bankrupt to the amount of approximately $48,000, against which Hutton & Company had an indebtedness of $37,690.01. These securities, upon the order of the said court, were directed to be sold by the receiver, and Hutton & Company then sold said securities, deducting its indebtedness from the proceeds thereof, and remitting the balance to the receiver, said balance being $10,467.27. This balance afterwards came into the hands of the trustee in bankruptcy and is now held by the trustee. Part of the securities so deposited with Hutton & Company belong to and are the property of these petitioners in the amounts and particular securities mentioned in the stipulation included herein.

III.

After such adjudication your petitioners filed a petition with the referee in bankruptcy, Sidney H. Wentworth, Esquire, to whom the bankruptcy matter had been referred, claiming said securities and the proceeds thereof and praying that the proceeds be distributed to these petitioners. A show cause order was issued, directing all parties interested to appear and show cause on a certain day why

said petitions should not be granted and to assert any claim to said fund, if any they had. On the return day of said show cause order, to wit, February 25, 1923, at 10 o'clock A. M., no other claimants appeared and no other claim has been made to any of said fund. A hearing was had between the petitioners on the one side and the trustee on the other, and the referee made an order in favor of these petitioners and adjudging them the fund as their interests appeared. The trustee, feeling aggrieved thereat, took a review of said order to the District Judge, and on the 31st day of July, 1923 an order was entered by the Honorable Jeremiah Neterer, District Judge, sitting in the Eastern District of Washington, Northern Division, reversing the order of the referee, a copy of which order is hereto annexed and made a part hereof. A copy of the order of the referee is also hereto annexed and made a part hereof.

IV.

The facts are stipulated and undisputed and are as follows:

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

No. 3812.

In the Matter of IRVING WHITEHOUSE COMPANY,

Bankrupt.

debt. If a full payment was made thereafter, the amount was forwarded to Hutton & Co. and the securities released and sent on to Irving Whitehouse Company. If sales were made of the collateral held by Hutton & Co., the amount received was credited by Hutton & Co. in reducing the amount of the debt owed them. In all marginal dealings it was agreed between Irving Whitehouse Company and the customer that the securities purchased as well as the collateral put up by the customer to secure his account with the bankrupt might be rightfully repledged. As a matter of fact almost all the collateral held by Hutton & Co. to secure the Irving Whitehouse Company account was composed either of the securities bought by marginal traders or securities deposited by them as collateral. The permission to repledge did not, however, confer upon the bankrupt the right of doing anything more than merely repledging the securities, and it was understood that if the amount due *on any account* on any account was paid in full, the bankrupt must at once deliver either the identical securities put up as collateral, or purchased, or others exactly similar thereto. In no event did the bankrupt have the right to sell such securities or authorize Hutton & Co. to do so, unless for the protection of the customer's account. For some time Irving Whitehouse Company had been accustomed to speculate on the market through an account known on its books as "Account 40." Sales and purchases were made for the benefit of the company through this account, and it developed that

often sales were made of securities owned not by Irving Whitehouse Company, but by its customers, so that the total actually held by Hutton & Co. for the customers of Irving Whitehouse Company was always much less than the total credited on the bankrupt's books to its customers. This total was likewise cut down by the following course of dealing: If, for instance, the bankrupt received orders to buy 200 shares of a certain stock, and on the same day an order to sell 100 shares, these orders would be forwarded to Hutton & Co., who would go upon the market and buy for Irving Whitehouse Company the difference, that is, 100 shares only, the long and short orders in such cases being balanced as to the remainder by book entries.

Due to various reasons, for some time prior to August 3, 1921, Irving Whitehouse Company was insolvent and had taken to the practice of pledging with Hutton & Co. securities left with it for safekeeping or for sale, which it had no right to pledge. Moreover, at least once before that date, the bankrupt directed Hutton & Co. to sell certain securities held on its account but which did not belong to it but were the property of its customers pledged under the understanding outlined above. As a result of these transactions, on the aforesaid date Irving Whitehouse Company was indebted to its customers who were dealing in eastern stocks and bonds through Hutton & Co. either on marginal or cash basis, in the sum of $211,098.27, computed on the basis of what the securities would have been worth on said August 3, 1921. In addition to this,

the company was indebted to various other creditors in excess of the security held by such concerns to an amount of approximately $90,000. None of these debts have been paid. On the said 3d day of August, 1921, at the suit of one of the creditors, a receiver, F. K. McBroom was appointed by the Superior Court of Spokane County, Washington, and shortly after his appointment he instructed Hutton & Co. to sell out all securities held in the Irving Whitehouse account. The securities, the price at which they were sold, and the exact time of the respective sales, are shown by the list set out below: t

SCHEDULE "A."

No. of Shares	Description	Price	Amount credited to Irving Whitehouse Co. Less E. F. Hutton Com. & Tax. Sold Amount	Date Executed	Time Executed
10	Mexican Petroleum	105¾	1,055.60	Aug. 5, 1921	11.27
23	Kennicott Copper	18⅝	424.01	Aug. 5	11.27
10	General Motor 6% Deb	63⅞	636.85	Aug. 5	12.42
20	Montana Power	44¾	891.20	Aug. 5	2.39
30	Missouri Pacific Pfd.	40⅛	1,198.05	Aug. 5	11.27
30	Northern Pacific Ry.	76¾	2,296.80	Aug. 5	11.27
10	Pennsylvania Ry.	36⅞	367.05	Aug. 5	12.49
4	Pacific Oil	36¼	143.84	Aug. 5	11.27
5	Pan American Pete B	42	208.88	Aug. 5	12.28
1/10	" " " "	40¾	3.04	Aug. 5	1.02
8	Pullman Company	94½	754.48	Aug. 5	1.18
17	" "	93¼	1,582.02	Aug. 5	2.06
25	Pure Oil	26⅜	655.35	Aug. 5	1.51
20/50	" "	25½	9.16	Aug. 5	2.12

No. of Shares	Description	Price	Sold Amount	Date Executed	Time Executed
10	Pierce Arrow	121⅛	139.35	Aug. 5, 1921	12.49
15	Royal Dutch	51	762.63	Aug. 5	12.49
14	U. S. Rubber	52	725.34	Aug. 5	11.27
2½	Retail Stores	53⅝	132.94	Aug. 5	1.50
10	Southern Ry.	197⅞	196.85	Aug. 5	2.43
15	Sullivan	41	612.15	Aug. 5	2.27
10	"	42	418.10	Aug. 9	12.43
15	Sears Roebuck	65⅛	974.03	Aug. 5	12.27
23	Swift & Company	98	2,250.00	Aug. 5	
4⅓	Studebaker	78⅛	337.34	Aug. 5	11.47
15	U. S. Food	17⅛	254.03	Aug. 5, 1921	12.28
5	United Smelting Pfd.	36⅞	183.18	Aug. 9	10.30
1	United Pacific	120½	119.46	Aug. 5	12.28
11	Westinghouse Elec.	43¾	479.36	Aug. 5	1.55
300 (100	Denny Oil	12	10.96	Aug. 5	11.06
(200	" "	10	18.92	Aug. 5	11.06
20	Silver King of Arizona (New	5	.96	Aug. 5	11.08
(100	Silv. King of Ariz. Old)				

No. of Shares	Description	Price	Sold Amount	Date Executed	Time Executed
1000	Canada Copper	35	341.00	Aug. 5, 1921	10.56
1000	Canada Copper	30	292.00	Aug. 5	10.56
33	" "	28	8.16	Aug. 5	10.56
11	Columbia Graphaphone	4 3/8	46.49	Aug. 5	12.03
3	Anglo American Oil	15 1/4	44.71	Aug. 5	11.10
30	New Cornelia	13 1/2 (Boston)	400.42	Aug. 5	10.55
50	Transcontinental Oil	7 5/8	375.50	Aug. 5	12.11
15	American Ship & Commerce	6 3/4	99.52	Aug. 8	2.52
30	General Motors	10 1/4	301.80	Aug. 5	11.27
25	Invincible Oil	7 1/8	175.73	Aug. 5	11.27
44	Willys Overland	6 1/2	282.26	Aug. 5	11.47
100	" "	6 5/8	654.00	Aug. 5	10.53
5	American Beet Sugar	29 5/8	146.93	Aug. 6	10.21
20	Allis Chalmers	31 3/8	623.70	Aug. 5	12.11
10	American Can	26 1/2	263.10	Aug. 5	11.27
28	American Sugar	66 1/4	1,849.68	Aug. 5	11.27
20	Central Leather	33 1/8	658.70	Aug. 5	11.47
25	Certainteed Products	21 3/4	539.00	Aug. 6	11.54

No. of Shares	Description	Price	Sold Amount	Date Executed	Time Executed
15	Amer. Hide & Leather Pfd.	50 7/8	760.28	Aug. 5	2.40
10	Chesapeake & Ohio	55 7/8	556.85	Aug. 5	12.49
15	Cuban American Sugar	16 1/4	241.42	Aug. 5	11.27
17	China Copper	22 5/8	382.04	Aug. 5	12.29
35	Chile Copper	10	334.39	Aug. 5	11.27
10	Great Northern Ore	27 7/8	277.25	Aug. 5	11.27
15	St. Paul Common	27 1/8	404.03	Aug. 5	2.50
10	" " Pfd.	41 5/8	414.35	Aug. 5	11.47
19	Cerro De Pasco	25 7/8	488.02	Aug. 5	11.00
9	Chicago, Rock Island A	75 7/8	681.17	Aug. 5	1.55
11	General Electric	117 1/2	1,290.41	Aug. 5	11.00
2/100	" "	116	1.28	Aug. 5	1.02
50	General Asphalt	53 3/8	2,659.25	Aug. 5	11.00
20	Greene Cananea	20 7/8	413.70	Aug. 5	12.41
100	International Nickel	14	1,384.00	Aug. 5	(10.14)
200	" "	13 3/4	2,718.00	Aug. 5	(10.24)
25	" "	13 7/8	342.85	Aug. 5	(10.53)
					11.00
5	Midvale Steel	24 3/4	147.38	Aug. 5	11.00

No. of Shares	Description	Price	Sold Amount	Date Executed	Time Executed
100	Loews Theatre	11¾	1,156.00	Aug. 5, 1921	10.23
50	Middle States Oil	11⅝	573.55	Aug. 5	11.00
2½	" " "	11¼	27.05	Aug. 5	11.53
600	Sears Roebuck Scrip	95	586.50	Aug. 5	11.36
3	Libby	9 in Chicago	24.98	Aug. 9	11.39
2	Texas Company		.29		
22	Midwest (or Standard Oil of India)	70½	2,094.96	Aug. 5	11.04
5	Stand. Oil of New Jersey Fef.	107⅝	536.93	Aug. 16	10.19
5	Standard Oil of New Jersey Co.	135¼	577.25		
	This purchase of S. O. N. J. Com. and sale of S. O. N. J. Pfd. was to clear books because of a short and long caused by 5 S. O. N. J. Com. being transferred for Myron Morland when 5 S. O. of N. J. Pfd. should have been issued in his name. Error made by Irving Whitehouse Co. in July, 1921.				
$1000	Chile 6's—1932.	71¾	737.17	Aug. 5, 1921	12.16
$1000	St. Paul 4's—1925.	76⅜	769.69	Aug. 5	12.16
$2000	International Tel. Sales & Eng. 6–1924.	75½	1,519.32	Aug. 6	11.16

Of all the securities above listed, Irving Whitehouse Company owned only the following, which sold at the price set out below:

15	Royal Dutch	$762.63
50	Transcontinental Oil	375.50
10	American Can Company	263.10
333	Canadian Copper	12.77
	Total	$1,414.00

The rest belonged to customers of Irving Whitehouse Company, by far the greater amount being the property of marginal dealers. The following securities were the only ones that had been paid for in cash, the price that each brought on the forced sale appearing opposite the security:

25	Shares Pure Oil Stock	$655.35
14	Shares U. S. Rubber	725.34
30	Shares General Motors	301.80
15	Shares St. Paul Common	404.03
10	Shares St. Paul Preferred	414.35
5	Shares Chicago Rock Island and Pacific "A"	378.42
100	Shares Loewe's Theater	1,156.00
30	Shares Northern Pacific	2,296.80
10	Shares General Electric	1,173.10
	Total	$7,505.19

At the time of making each of said sales, Hutton & Co. passed the net sum realized from the sale to the credit of Irving Whitehouse Company on its books. These securities were held as collateral security for an indebtedness due Hutton & Co. from the bankrupt of $37,690.01, and there was realized from the sale of all the securities $48,155.28; after all of said sales had been made by Hutton & Co. the amount remaining of the money realized from the sales, after so satisfying Hutton & Co.'s claim, to wit; $10,465.27 was transmitted to F. K. McBroom, Receiver. Thereafter certain other sums were received by McBroom, and upon the appointment of W. S. McCrea as trustee he was ordered to deduct from the amount he had on hand the receivership claims and expenses and turn the balance over to said McCrea. Pursuant to this order he delivered to said trustee the sum of $15,149, which sum the trustee still has on hand, and it appears certain that the sums coming to the said McCrea in his capacity as trustee will not exceed $30,000, from which he must deduct all proper expenses and preferred claims, including his and his attorneys' compensation, together with any sums found to be due these petitioners, before the balance may be turned over to the creditors. At no time after said receiver received the said $10,465.27 did the amount of money in his hands fall below that amount until after he had turned over the funds in his hands to the trustee.

Most of the said claims, amounting to $211,098.27 were due to the fact that the bankrupt had been paid

the purchase price in certain instances in full for the purchase of securities through Hutton & Co. which the bankrupt did not deliver, or that the claimants had ordered on margin to be purchased through Hutton & Co. stock or other securities and had put up collateral in the way of stocks or bonds with the bankrupt which the bankrupt either sold or deposited with Hutton & Co. as collateral for its account and such securities were sold by Hutton & Co. and no accounting had with the customer.

As to the various claims involved it should be remembered that each of these transactions followed in general outline the course of dealings described above, and that it is only the details of importance in each particular case that are set out here.

Oscar Lantor, represented by S. Edelstein as his counsel, on June 21, 1921, ordered through the bankrupt twenty (20) shares of Northern Pacific stock, and the said bankrupt for the purpose of filling said order, ordered the said stock in its own name through Hutton & Company, and the stock was bought by Hutton & Company for the credit of the bankrupt, and the purchase price charged to the bankrupt. The said order was by wire, and on the same day the said bankrupt advised the said Oscar Lantor by wire that it had purchased the said twenty (20) shares of Northern Pacific stock, and on June 24, 1921, the said Oscar Lantor remitted in full to the said bankrupt the sum of Thirteen Hundred Forty-eight and 50/100 ($1348.50) dollars in payment of said stock, and on June 25, 1921, the said bankrupt acknowledged the receipt of the re-

mittance, and in said acknowledgment advised the said Oscar Lantor that the twenty (20) shares of Northern Pacific stock was ordered transferred in the name of the said Oscar Lantor. On June 30, 1921, the bankrupt ordered the said twenty (20) shares of Northern Pacific stock through Hutton & Company to be transferred in the name of the said Oscar Lantor, but said telegram was either missent or was miscarried, but there is no evidence Hutton & Co. received such order. On several occasions prior to August 3, 1921, the said Oscar Lantor called upon the said bankrupt for his stock and was advised that the same was being transferred. On July 18, 1921, the said bankrupt wired Hutton & Company inquiring why said stock had not been transferred in accordance with their message of June 30, 1921, at which time Hutton & Co. notified the bankrupt that the order of transfer had never been received. The said Oscar Lantor had no account with the said bankrupt prior to the transaction mentioned, never authorized the said bankrupt to hypothecate said stock with Hutton & Company nor to deal with said stock. The said Oscar Lantor had no knowledge that the said stock was being held by Hutton & Company for collateral for any indebtedness due it from the said bankrupt. The said bankrupt at divers times promised to have the transfer of said stock made in the name of Oscar Lantor, but such transfer was never made nor the stock delivered to the said Oscar Lantor up to the time of the appointment of said receiver.

David Ackerman, represented by Wakefield & Witherspoon, being the owner of one hundred (100) shares of Loew's Theatre stock, prior to August 3, 1921, delivered said stock to the bankrupt under an agreement whereby the bankrupt was to loan said stock on behalf of said claimant to E. F. Hutton & Co. to be used by said E. F. Hutton & Co. as collateral for its loans in New York, with the understanding between said bankrupt and said claimant that said Hutton & Co. would pay the claimant the prevailing call money rate of interest thereon. The referee specifically finds that said claimant did not authorize the bankrupt to pledge said stock with Hutton & Co. as collateral for the bankrupt's account; that the bankrupt did deposit said stock with Hutton & Co. as collateral for bankrupt's account, and the said stock was never returned to the claimant; that said stock was in the possession of Hutton & Co. at the time of the appointment of the Receiver for the bankrupt by the Superior Court of Spokane County, Washington, and was sold by Hutton & Co., with other stock to liquidate the bankrupt's indebtedness to it, as referred to elsewhere in these findings.

Stanley Hodgman, represented by Wakefield & Witherspoon, on July 11, 1921, placed an order with the bankrupt for 5 shares of Chicago, Rock Island Pacific Preferred "A" 7% stock, and before the appointment of the receiver had fully paid for and demanded delivery of said stock. That upon the said order being placed the bankrupt on July 14, 1921, placed an order for the said stock for the

purpose of complying with its contract with Hutton & Co., which last mentioned company purchased the said stock on said order at the price, with commission, of $366.63; the said stock being purchased for the account of bankrupt and the purchase price charged against the bankrupt, but said stock was never delivered to the claimant.

Hazel Mowers, represented by Graves, Kizer & Graves, on or about February 16, 1921, delivered to Irving Whitehouse Company one $1,000 Chicago, Milwaukee & St. Paul bond bearing interest at 4% per annum and maturing in 1925, and instructed the Company to sell the same. Later on, or about March 7, 1921, she ordered the bankrupt to purchase for her one $1,000 Chile Copper bond bearing interest at 6%, maturing in 1932. Thereafter, in April of 1921, she ordered five shares United States Rubber Company stock, five shares of Canadian Pacific Railway Company and two shares of American Agricultural Company stock. These last mentioned securities, together with the Chile Copper Company bond, were purchased on the installment plan, but Miss Mowers desired delivery of the shares of stock last mentioned and therefore placed with Irving Whitehouse Company as collateral security one $1,000 Chicago, Rock Island & Pacific Bond, one $1,000 Chicago, Milwaukee & St. Paul bond maturing in 1932, and one $1,000 Chesapeake & Ohio bond, agreeing that the Company might hold the same, together with the Chile Copper Company bond above referred to, as collateral security for the amount remaining due on

the aforesaid shares of stock. Irving Whitehouse Company thereafter pledged all the above securities, including the Chicago, Milwaukee & St. Paul bond delivered for sale, with Hutton & Co. Petitioner Mower made various payments and received delivery of the American Agricultural Company and the Canadian Pacific Railway Company stock. On July 27, 1921, she still owed Irving Whitehouse Company the sum of $1837.90, and the Company was holding in pledge with Hutton & Co. the aforesaid bonds and also five shares of United States Rubber and five shares of Northern Pacific Railway. On that date, the Bankrupt instructed Hutton & Co. to sell the following bonds belonging to this petitioner; the $1,000 Chesapeake & Ohio bond, the $1,000 Chicago, Rock Island & Pacific bond, and the $1,000 Chicago, Milwaukee & St. Paul bond maturing in 1932. The result of this sale was, if it may be applied to convert the debt of $1837.90 previously owed by Hazel Mowers to a balance in her favor of approximately $350. On the 3d day of August, 1921, the Bankrupt was holding in pledge with Hutton & Co. the following securities:

5 shares United States Rubber Co. stock.
5 shares United States Rubber Co. stoke.
1 $1,000 Chicago, Milwaukee & St. Paul bond maturing in 1925.
1 $1,000 Chile Copper Company bond maturing in 1932.

the last two being the identical bonds placed in pledge. These securities were sold in the manner described in the list set out above.

Mabel Connor, represented by Graves, Kizer & Graves, on or about April 13, 1921, ordered the company to purchase for her on the installment plan five shares of Northern Pacific Railway Company stock, and put up at that time as collateral one $1,000 Chicago Railway Company bond. The bankrupt pledged both the shares of stock which were purchased and the bond with Hutton & Co., and thereafter, on July 27, 1921, wrongfully instructed Hutton & Co. to sell the aforesaid bond. As the result of such sale, if the proceeds may be so applied, the debt owned by Mabel Connor to the bankrupt was converted into a balance in her favor of approximately $350. The five shares of Northern Pacific Railway Company stock were sold in the manner described in the list set out above.

Maude Mowers, represented by Graves, Kizer & Graves, on July 6, 1921, ordered the bankrupt to purchase for her twenty-three shares of stock of the Northern Pacific Railway Company and ten shares of stock of the Canadian Pacific Railway Company, and at the time paid the full purchase price. The Irving Whitehouse Company, however, failed to deliver such securities, but permitted them to remain in pledge with Hutton & Co. and allowed them to sell the Canadian Pacific Railway Company stock prior to August 3, 1921. The twenty-three shares of Northern Pacific Railway Company stock were sold in the manner described in the list set out above.

L. C. Ream, represented by Graves, Kizer & Graves, on July 6, 1921, ordered the Bankrupt to

purchase for him twenty-five shares of Pure Oil Company stock and paid a certain sum down, promising to pay the balance. On July 11, 1921, he paid this balance, and on July 12, 1921, ordered the bankrupt to purchase for him twenty-five additional shares of the same security, and at that time paid the full purchase price. The securities were all purchased through Hutton & Co. and were left in pledge with them by the bankrupt. They were sold in the manner described in the list set out above.

H. E. Woodland, represented by Graves, Kizer & Graves, on the 15th day of January, 1921, ordered the bankrupt to purchase for him fifteen shares of Northern Pacific Railway Company stock and paid part of the purchase price, promising to pay the balance. On July 8, 1921, he paid the balance due and requested delivery. Irving Whitehouse Company, however, permitted Hutton & Co. to retain the said Northern Pacific Railway Company stock in pledge, and these securities were sold in the manner described in the list set out above.

T. S. Lane, represented by Allen, Winston & Allen, being the owner of a $2,000 International Tel. Sales and Eng. 6% bond due in 1924, a long time prior to August 3, 1921, delivered said bond to the bankrupt together with other securities as collateral security for a marginal account which said Lane had with the bankrupt. Prior to August 3, 1921, the bankrupt had converted securities which had been ordered by said Lane and collateral which had been delivered to the bankrupt as col-

lateral security for Lane's account to an extent that the debit balance of said Lane on his marginal transaction had been changed into a credit balance in favor of said Lane. Long prior to said August 3, 1921, the bankrupt had in turn placed said $2,000 bond with E. F. Hutton & Company as collateral security for the bankrupt's account with said Hutton & Company, and said bond remained with said Hutton & Company until after the receiver was appointed on August 3, 1921, and was sold as shown above, the amount realized from said sale being $1519.32.

On January 4, 1923, said Lane filed with the Referee in Bankruptcy his claim against the bankrupt estate in the sum of $43,718.87; on January 9, 1922, said Lane filed his amended claim with the Referee in the sum of $103,689.87; on October 16, 1922, the Referee made an order regarding the recasting of claims, the effect of which was that the securities should be figured as of their value on August 3, 1921, unless the claimant should be able to show that they were converted at an earlier date, and would then be entitled to place the values as of the date of the conversion; on November 14, 1922, the said Lane filed with the Referee his second amended claim in the sum of $85,530.06; heretofore a dispute arose between said Lane and the Trustee in Bankruptcy regarding a preference which the Trustee claimed had been received by said Lane in the sum of $6700; this dispute was settled by the execution of a written agreement between Lane and the Trustee that said Lane should

pay to the Trustee $5700, and that the claim of said Lane against the bankrupt estate was assigned as collateral security to secure the payment of said sum of $5700. This claimed preference of $6700 arose out of the fact that immediately prior to the appointment of the Receiver in the state court, the bankrupt, without said Lane's knowledge, caused said sum to be deposited in a New York bank to the credit of said Lane; prior to the failure said Lane had given to the bankrupt a note for $7,000 executed by him for which he received no consideration, and this note was pledged by the bankrupt with the Fidelity National Bank with other securities for an obligation due from the bankrupt to said bank; had said transfer of money not been made the result would have been that the debt due from the bankrupt to the Fidelity National Bank would have been reduced by the money so deposited to the credit of said Lane. The $2,000 debenture of the International Tel. Sales and Eng. Co. was included in each of the claims filed by said Lane with the Referee, the claimant claiming an indebtedness due to the conversion of said debenture.

F. D. Allen, of counsel for said Lane, on or about October 17, 1922, received from the Referee a copy of the order of October 16, 1922, above referred to; he thereupon proceeded to investigate to determine the date of the conversion of the securities of said Lane, and then discovered that said debenture had been sold in the manner and at the time shown above; he communicated this information to said Lane who then, for the first time, had actual knowl-

edge of the facts as to the time and manner when said debenture was sold or had gone into the hands of the Receiver.

Irving Whitehouse, the president of the bankrupt, had been employed by said Lane in business enterprises in Butte, Montana, some years prior to August 3, 1921, had after the bankrupt had commenced operations in New York traded with it extensively; about the Friday preceding the appointment of the Receiver, checks drawn by the bankrupt company were dishonored, information of this fact was given to F. D. Allen, one of the bankrupt's attorneys; as a result thereof a conference was held in which said Lane either participated or of which he had knowledge, and as a result thereof an investigation was then made and conference had with certain accountants of the bankrupt, with the result that prior to the time of the failure said Lane knew that the bankrupt was hopelessly insolvent and that it had been kiting checks; that it had an overdrawn bank account, and that it had pledged and sold large amounts of the securities of its customers; claimant further went to the Fidelity National Bank and made investigation there as to the status of the bankrupt's account, ascertaining that it was overdrawn to the extent of about $20,000 and that large amounts of securities belonging to said Lane and other customers had been pledged, and many of them sold. Said Lane is a man of wide experience and had he gone to the books of the bankrupt corporation he could have discovered with but little difficulty the fact that the debenture in

question was in the possession of Hutton & Company, as security for Hutton's advances to the bankrupt, and had not been sold prior to the time of the appointment of the Receiver. Said Lane has filed with the Referee his consent that in passing upon his claim for reclamation of said fund, that the Referee may make such order as will do equity herein.

Charles Theis, represented by Fabian B. Dodds, prior to April 10, 1921, ordered through the bankrupt, 30 shares of American Hide & Leather, preferred, and one I. L. Flagler ordered through the Bankrupt 10 shares of the same stock; the bankrupt in turn ordered this stock through Hutton & Company, and the stock was purchased by Hutton & Company on the order of the bankrupt. On May 10, 1921, Hutton & Company held 40 shares of this stock for the account of bankrupt, and there were no other customers of the bankrupt who were long on this stock at the time the Receiver was appointed August 3, 1921, and the bankrupt owned no Hide & Leather stock except that held with Hutton & Company. On May 10, 1921, 25 shares of the said stock was sold by Hutton and Company on the order of the bankrupt, and the proceeds converted by the bankrupt; the remainder of 15 shares continued to be held by Hutton & Company until after the Receiver was appointed in the said court, and was sold as shown above, and in point of time as to the other securities as shown elsewhere in this stipulation. On August 3, 1921, at the time the Receiver was appointed,

said Theis and said Flagler had a credit balance on the books of the bankrupt due to the conversion of their securities. I. L. Flagler has not appeared in this special proceeding in any manner whatever.

H. Sidney Collins, represented by John King, on July 8, 1921, ordered through the bankrupt 10 shares of American Telephone and Telegraph Co. stock, and paid in full for same. The bankrupt in turn, for the purpose of performing its contract with Collins, ordered the said stock through Hutton & Company, and it was purchased by Hutton & Company. On August 2, 1921, prior to the appointment and qualification of the Receiver Hutton & Company on the order of the bankrupt sold all American Telephone and Telegraph stock which it held for the bankrupt and applied the proceeds toward the liquidation of the indebtedness due it from the bankrupt for which the stock was held as collateral.

On or about July 19, 1921, Augusta W. Howell placed an order with Irving Whitehouse Company for ten (10) shares of General Electric Company stock, and was charged by Irving Whitehouse Company with the full purchase price thereof with commissions, amounting to Eleven Hundred Ninety-one ($1191.00) Dollars. Immediately thereafter said Irving Whitehouse Company in compliance with said order, bought from Hutton & Company, its New York correspondent, for said Augusta W. Howell ten (10) shares of said General Electric Company stock. On July 26, 1921, said Augusta W.

Howell paid said Irving Whitehouse Company said sum of Eleven Hundred Ninety-one ($1191.00) Dollars, which paid for the said stock in full, and directed said Irving Whitehouse Company to deliver said stock to petitioner. On the 3d day of August, 1921, Hutton & Company held for the account of the bankrupt ten (10) shares of said General Electric Company stock. Hutton & Company also held for the account of the bankrupt one and two-hundredths (1.02) shares of General Electric stock purchased for another customer who had ordered one and two-hundredths (1.02) shares from bankrupt. There were no other customers in General Electric Stock, and the bankrupt was not carrying any of such stock for its own account.

Said Augusta W. Howell filed a claim for said sum with the Receiver in said Superior Court and also filed a claim for said sum in the above-entitled court. Prior, however, to filing either of said claims, and on or about the 2d or 3d day of August, 1921, Mr. Kimmel and Mr. Blum of the Union Trust Company, acting for Miss Howell, went to the office of the Irving Whitehouse Company and asked whether the bankrupt had purchased the stock so ordered, and were informed and understood that such stock had not been ordered and was not on hand, and said claims were filed by said Augusta W. Howell with that understanding and belief. Upon discovery of the facts and on or about November 1, 1922, and prior to the declaration of any dividend by the bankrupt's estate, filed her withdrawal of her claim as a creditor for money paid

(Testimony of Alexander Stephens.)

the bankrupt, and has never received any dividend as a general creditor for money paid the bankrupt, and has never received any dividend as a general creditor, and has elected to stand upon her petition to reclaim the proceeds of the stock.

As to Alexander Stephens, represented by McCarthy, Edge & Lantz, the facts were as follows:

Testimony of Alexander Stephens, for Plaintiffs.

ALEXANDER STEPHENS testified substantially as follows:

"I had a balance on deposit with Irving Whitehouse Company for some five or six months prior to January 5, 1921, amounting to $465.00. On that date I went to the Irving Whitehouse Company and asked them to purchase for me such amount of the New Cornelia stock as my money on deposit would pay for in full. They figured it up for me and said that my money would purchase thirty shares and leave a balance of about $15.00. I do not remember giving any written order, or any order whatever, or for any fixed number of shares, but I understood that I was to get 30 shares.

"A few days later they sent me a statement or told me that they had purchased on my account 30 shares of the stock, and that on account of change in price that the purchase, including their commission, amounted to $15.50 more than my money. I disputed this and doubted that they had paid such price and requested that proofs be submitted that they had paid for the stock the price they claimed, and they promised to supply same, but

(Testimony of Alexander Stephens.)

never did so. The matter was simply let drag along and I never demanded my money back or in any way repudiated the transaction and never demanded the delivery of the stock. I was billed for the balance of $15.50, with interest thereon, monthly by the Irving Whitehouse Company until the time of the receivership and bankruptcy, and herewith submit a sample of one of the bills or statements referred to above. They told me when I purchased the stock that it was a stock which could not be purchased on a margin and that it would have to be paid for in full purchase price when purchased, and I understood that it was not a marginal transaction. I am willing to pay the $15.50 balance with interest thereon, or permit it to be deducted from a distribution to me in accordance with my petition herein."

Testimony of J. C. Bird, for Plaintiffs.

Mr. J. C. BIRD, accountant for bankrupt, testified substantially as follows.

"That on or about January 5, 1921, another employee of Irving Whitehouse Company brought me an order for 30 shares of New Cornelia stock which I immediately executed. The price paid including the commission actually was $15.50 more than the money Mr. Stephens then had on deposit. It is the custom of brokers to take orders for specific numbers of shares, and we cannot execute an order in New York except for a definite number of shares. I would not consider this a marginal transaction

(Testimony of J. C. Bird.)

as it was about fully paid for and the amount had no relation to the market fluctuations, but our practice was to carry as a marginal transaction any stock on which there was some balance due, no matter how small, and we consider we had the right to hold stock purchased in pledge until the full purchase price was paid, and this was the way in which we carried this transaction and is the general custom of stock brokers. The New Cornelia transaction had with Mr. Stephens was the only transaction which was ever had with Irving Whitehouse Company by Mr. Stephens or anyone else with reference to that class of stock, and the stock purchased was for the account of Mr. Stephens.

As to the claimant O. W. Wittmer, represented by E. B. Quackenbush, the facts were as follows:

Testimony of O. W. Wittmer, In His Own Behalf.

O. W. WITTMER, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. QUACKENBUSH.)

Q. Mr. Wittmer, you may state how this account was handled with Hutton & Co., through the Whitehouse Co.?

A. Well, this Middlestates Oil, a hundred shares of it, was purchased through Wolff & Co., of New York, and it was purchased on deposit of $780.00 worth of German Government bonds as collateral.

(Testimony of O. W. Wittmer.)

That account was afterwards transferred to Hutton & Co., through Irving Whitehouse dealing with me, and immediately after the account was transferred Whitehouse Co. notified me that Hutton would not accept German Government bonds as collateral for the account, and in lieu thereof I put up cash to the extent of —. I made three payments, $250.00 at one time, $100.00 at another, and $150.00 at another. My arrangement with Whitehouse & Co. was on what they call a payment plan, not a marginal account in which a man signs a release of the stock he buys; no release of that kind was ever signed.

Q. Did you over consent to—?

A. No, sir.

Q. —the use of your securities for any other purpose?

A. No, sir; I told them very emphatically before the account was transferred that I wanted to make it absolutely safe it would not be sold out, and that was the stipulation and the agreement. On the payment of the last amount of money that receipt and agreement was prepared and handed to me.

Q. Did you ever consent at any time to Whitehouse obtaining possession of these bonds?

A. No, sir,

Q. That is, the German Government bonds, 60,000?

A. No, sir.

Q. When did you first know he had taken possession of them?

(Testimony of O. W. Wittmer.)

A. I did not know anything about it until I got back here after the failure had occurred.

Q. What time was that?

A. I came back about the latter part of August.

Q. When did you leave here?

A. I left here the 25th day of May.

Q. Immediately when you got that information did you make an effort to get these bonds?

A. I most certainly did.

Q. Where did you find they were?

A. Well, for a long time I did not find out about them, except everything was on—

Q. Did you ever go over to their office to try to find out?

A. Yes, sir.

Q Did you get the information?

A. Finally I got the information from Mr. Byrd.

Q. What did you do in an effort to get them?

A. We entered suit.

Q. First did you make an effort to get them from the bank?

A. I wrote to the bank and they informed me—

Mr. WILLIAMS.—Just a moment. I object to that as hearsay, and further it is not the best evidence.

The WITNESS.—What do you mean, Mr. Williams?

Mr. WILLIAMS.—That is, what the bank may have said to you by letter is not the best evidence.

The REFEREE.—Sustain the objection.

(Testimony of O. W. Wittmer.)

Mr. QUACKENBUSH.—Did you make a demand on the bank for these bonds?

A. Yes, sir.

Q. Did they give them to you?

A. No, sir.

Q. And later what did you do?

A. I gave them even the numbers of each bond.

Q. Did they have those bonds?

A. Yes, sir, they admitted they had them.

Mr. WILLIAMS.—I move to strike out that as hearsay, what they admitted.

The REFEREE.—Well, Mr. Byrd testified they had them.

Mr. WILLIAMS.—Yes, there is no doubt about that.

Mr. QUACKENBUSH.—Were you ever able to get possession of the bonds?

A. No, sir.

Q. What else did you do towards getting them?

A. Well, I instituted suit against them and made every effort to get them without letting it go to suit.

Q. Found out eventually you had to abandon it because they had a claim you could not beat?

Mr. WILLIAMS.—Just a minute. I object to that as a conclusion.

Mr. QUACKENBUSH.—Why did you abandon the suit?

A. Principally because they held them and did not acknowledge my rights in there, said they were put up by Irving Whitehouse.

(Testimony of O. W. Wittmer.)

Mr. WILLIAMS.—I object to that as hearsay.

The REFEREE.—Sustain the objection.

Mr. QUACKENBUSH.—You have never been able to recover them?

A. No, sir, I have not been able to recover them.

Q. Now, state the condition of the account from that time on, from the time you paid $250.00 as you know it to be.

A. Well, I only know what the books showed. The books showed that fifty shares of the stock had been—

Mr. WILLIAMS.—We have already got that in evidence.

Mr. QUACKENBUSH.—Do you know what the value of the bonds were on June 10, 1921?

A. Yes, sir.

Q. What was it?

Mr. WILLIAMS.—I thnk I will object to this witness testifying; he has not shown himself qualified to testify.

The WITNESS.—That is what you had this gentlemen here to testify.

Mr. QUACKENBUSH.—Did you look up the market reports of those bonds for the month of June to-day, or of the marks?

A. Yes, sir; I went down to the library this morning and they would not let me take the large books on which these were away from the library, so I copied them under dates of June 10 to June 15th.

Q. What were those books?

(Testimony of O. W. Wittmer.)

Mr. WILLIAMS.—Just a moment. May I see your figures before I object?

The WITNESS.—Yes, that is per thousand.

Mr. WILLIAMS.—I object to it as not being the best evidence. I do not want to be technical about it, but we have not those papers here to see what they show the condition of them.

The REFEREE.—There is nothing I can do but sustain the objection.

The WITNESS.—Mr. Mallette, who was just here, said that the record show from the 5th of June to the 16th of June, they varied from 16 down to 12½.

Mr. WILLIAMS.—I object to what Mr. Mallette said.

Mr. QUACKENBUSH.—What did you take those off of, Mr. Wittmer?

A. The New York Times.

Q. The New York Times?

A. Yes, sir.

Q. The general market reports as made on those dates in the New York Times.

A. Yes, sir. From each paper each day.

Q. Are those figures you have there a correct transcription of them?

The REFEREE.—I have sustained objection as to his testimony as to that.

Mr. QUACKENBUSH.—I understood here we could use the books or papers.

Mr. GRAVES.—He cannot testify.

(Testimony of O. W. Wittmer.)

Mr. QUACKENBUSH.—Refreshing your memory from the market reports as you know them to be, you may state if you know what the prices of those German marks were on the 10th day of June.

Mr. WILLIAMS.—Just a minute. I object. The report he has seen in the paper would be the best evidence, not his recollection of what it was.

The REFEREE.—There is no doubt about that.

Mr QUACKENBUSH.—Can we use the Review?

Mr. WILLIAMS.—I won't object to the Review.

Mr. QUACKENBUSH.—Now, Mr. Wittmer, at any time did you sign any document or contract or paper or anything of that kind authorizing Whitehouse or Hutton to dispose of these bonds, or of the Middlestates Oil stock?

A. No, sir; there was no release given or anything of the kind.

Q. Did you sign the ordinary purchaser's contract with Whitehouse?

A. No, sir.

Q. Or with Hutton & Co. from them?

A. No.

Mr. GRAVES.—What do you mean by ordinary purchaser's contract?

Mr. QUACKENBUSH.—That is where they sign the right to hypothecate and all that.

Mr. GRAVES.—There is no contract of that kind except the taking of the receipt.

The WITNESS.—Well, that is on the receipt.

Mr. GRAVES.—There is no contract signed at

(Testimony of O. W. Wittmer.)

the time that the customer goes in and opens his account with them?

The WITNESS.—When he purchases without paying for them, there always is.

Mr. McCARTHY.—When he buys on a margin, there always is.

Cross-examination.

(By Mr. GRAVES.)

Q. Now, at this time this was the only agreement, this embodies all of the agreement entered into between yourself and Irving Whitehouse Company? I am referring to Wittmer's Exhibit 3.

A. That is the only written agreement, yes, sir.

Q. Any oral agreement you entered into was made at the same time or about the same time?

A. Well, practically the same thing; the account was transferred a little before that.

Q. Any oral agreement you made was made prior to the date of this written agreement?

A. Yes, sir.

Q. There was no oral agreement subsequent to the date of this?

A. No, sir.

Q. At all times you were indebted on your installment transaction for the purchase price of these one hundred Middlestates Oil up to the 3d of August, 1921?

A. Not according to their books, no, sir; according to their statement, I was.

Q. As I say, you had never paid the full pur-

(Testimony of O. W. Wittmer.)

chase price of these Middlestates Oil up to the 3d day of August, 1921?

A. No, sir.

Q. And before that time you were indebted to the Whitehouse Company in the amount remaining over these installments that you had paid from month to month?

A. Well, I want to answer that question right, but according to their records I was not in debt to them, but not according to their statement, I was.

Q. Well, had you prior to the 3d day of August, 1921, paid the full purchase price of 100 Middlestates Oil to Irving Whitehouse Company?

A. No, sir.

Mr. GRAVES. All right.

Redirect Examination.

(By Mr. QUACKENBUSH.)

Q. Did you know they had converted your German marks before the 3d of August?

Mr. WILLIAMS.—I object to that as a conclusion.

A. No.

Mr. QUACKENBUSH.—Did you know that Irving Whitehouse had taken possession of these German government bonds and applied them on his own account to the National City Bank of Seattle?

Mr. GRAVES.—I object, that is incompetent, irrelevant and immaterial. Under the custom proved the broker may pledge any securities that are up on a marginal transaction in any way that he wants, but it makes no difference whether Mr. Wittmer

(Testimony of O. W. Wittmer.)

knew they were dealing in these securities in the manner in which they were entitled to.

Mr. QUACKENBUSH.—They could not transfer it and not give him credit for it.

Mr. GRAVES.—Your Honor will take judicial notice.

The REFEREE.—I know that is the general custom.

Mr. QUACKENBUSH.—When you say you owed him, do you take into account the proceeds of any of this collateral of yours? A. Absolutely not.

Mr. GRAVES.—I object, that is incompetent, irrelevant and immaterial.

The REFEREE.—What was that question? (Question read.)

Mr. GRAVES.—I object on the ground that it is incompetent, irrelevant, and immaterial. We are trying to ascertain the true basis or the true outlines of the account between Mr. Wittmer and Irving Whitehouse Co. and he may not take credit for any stuff he has put up there for collateral.

The REFEREE.—Let him answer, whether it is material or not. I will decide later, but he is going away so he may answer.

A. (Answer read.)

Mr. QUACKENBUSH.—That is all.

Mr. GRAVES.—That is all.

Witness excused.

Testimony of J. C. Byrd, for Plaintiffs (Recalled).

J. C. BYRD testified as follows:

"Mr. Wittmer had carried on an account with Wolf & Company of New York, and at the time of the transfer of his account to Hutton & Company was indebted to Wolf in the sum of approximately $1,400.00 to secure which Wolf held as collateral 100 shares of Middlestates Oil and German government bonds for 60,000 marks. He caused this account to be transferred from Wolf & Company to Hutton & Company through the agency of Irving Whitehouse Company. The transaction was consummated by Hutton & Company paying the debit balance due to Wolf & Company and charging Irving Whitehouse Company with the amount so paid. Irving Whitehouse Company, in turn, charged Wittmer for the same amount. The collateral carried with Wolf & Company was turned over to Hutton & Company, but Hutton & Company refused to carry the 60,000 government bonds because of the weakness of the market. Wittmer was a marginal dealer, and both the Middlestates Oil and the 60,000 government bonds were held as collateral by Irving Whitehouse Company on his account and the German bonds were shown as collateral on the statements rendered him by Irving Whitehouse Company. The bonds were shipped to Spokane after Hutton & Company refused to hold them, and were pledged by Irving Whitehouse Company on its own account with the

(Testimony of J. C. Byrd.)

National City Bank of Seattle some time in June of 1921. Wittmer did not sign the usual contract signed by customers of Irving Whitehouse Company, nor any other contract or agreement with Whitehouse & Company. Wittmer's exhibit 3 is a receipt for $250.00 paid by him to cover five monthly payments of $50.00 each, including all payments due up to and including the 15th of October, 1921. The receipt contains an agreement that the stock would not be closed out prior to that date. The only effect of this contract is to provide that if the market should fall greatly so that with the money put in Wittmer would still need more to make his margin, he would nevertheless not be sold out since he had paid ahead and would on that date make good what the market had lost. Disregarding any conversion of securities of Wittmer, the amount he owed Irving Whitehouse Company on August 3, 1921, was $855.69; 50 shares of Middlestate Oil belonging to Wittmer had, however, been sold by Irving Whitehouse Company prior to that date for $553.00, so that if he received credit for such sale he would still be indebted to Irving Whitehouse Company in the sum of $300.00 disregarding any questions of the conversion of the German bonds. It is the custom in all marginal transactions carried on between the broker and his customer that the broker may rehypothecate any securities which he holds on the customer's account so long as the customer remains indebted to him. Neither Irving Whitehouse Company nor any of its cus-

tomers, with the exception of Mr. Wittmer, were at the time of the failure long in Middlestates Oil, and there were at that time 52½ shares of that stock carried by Hutton & Company on the Irving Whitehouse account which appear to be some of the identical shares which were transferred from Wolf & Company to Hutton & Company."

Whereas, on or about September 29, 1922, the referee on the petitions of the claimants David Ackerman, Stanley Hodgman, L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland, Oscar Lantor and Maude Mowers made an order on the facts relating to such claimants above set forth, which order has been certified to the District Court for review, but has not been passed upon, and it is the desire to have the rights of all the claimants named in this stipulation disposed of by one order, subject to review. It is further agreed by said David Ackerman, Stanley Hodgman, L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland, Oscar Lantor, Maude Mowers and the Trustee that the said previous order of the referee may be set aside and vacated and for naught held, and that the whole matter shall now be disposed of in one order, subject to review, and if in order to carry out the purpose it is necessary that the District Judge shall make an order cancelling the said previous order made by the referee, that such course shall be taken.

Dated this —— day of April, 1923.

WAKEFIELD & WITHERSPOON,
Attorneys for David Ackerman, Stanley Hodgman and Augusta W. Howell.

GRAVES, KIZER & GRAVES,
Attorneys for L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland and Maude Mowers.

S. EDELSTEIN,
Attorney for Oscar Lantor.

FABIAN B. DODDS,
Attorney for Charles Theis.

McCARTHY, EDGE & LANTZ,
Attorneys for Alexander Stephens.

ALLEN, WINSTON & ALLEN,
Attorneys for T. S. Lane.

E. QUACKENBUSH,
Attorney for O. W. Wittmer.

_____,
Attorney for H. Sidney Collins.

DANSON, WILLIAMS & DANSON,
Attorneys for W. S. McCrea, Trustee.

V.

That said order of the District Judge was and is erroneous in the matter of law in that the Court erred as follows:

1. In reversing the order of the Referee.
2. In refusing to affirm the order of the Referee.
3. In adjudging the Bankrupt or the Trustee entitled to any portion of said fund until after these claimants had been paid in full.
4. In failing and refusing to order said fund to

be the property of said claimants so far as necessary to pay them in full.

5. In failing and refusing to order all other claimants estopped from claiming any part of said fund.

6. In failing and refusing to hold said show cause order and the proceedings thereunder barred any other claimants to any part of said fund.

7. In failing and refusing to order that the said Trustee had no property right in said fund.

8. In failing and refusing to order the entire indebtedness of Hutton & Company to be paid from any interest the Bankrupt or the Trustee might have in said securities, or any of them.

9. In ordering these claimants, or any of them, to pay any of the sum due Hutton & Company.

10. In ordering the interest of these claimants in said fund, or any part thereof, to be subject to the claim of Hutton & Company.

11. In ordering the interest of said claimants, or any of them, to be prorated according to ownership in each security after deducting any indebtedness, or to be prorated at all.

12. In failing and refusing to award to those claimants who identified their particular securities among those held in the Hutton & Company pledge the amount obtained for such securities on their sale.

13. In failing and refusing to award claimants who identified in the Hutton & Company pledge securities similar to those which the bankrupt was under obligation to be holding for them, the full value of such a proportion of the identified securities

as the number of shares each of such claimants were entitled to bore to the total amount of such shares that the bankrupt was under obligation to be holding for all his customers.

WHEREFORE your petitioners, feeling aggrieved because of such order, ask that the same may be revised in matter of law by your Honorable Court as provided in Section 24–b of the Bankruptcy Act of 1898, as amended, and the rules and practice in such case provided.

GRAVES, KIZER & GRAVES,
Attorneys for L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland and Maude Mowers.

S. EDELSTEIN,
Attorney for Oscar Lantor.

FABIAN B. DODDS,
Attorney for Charles Theis.

McCARTHY, EDGE & LANTZ,
Attorneys for Alexander Stephens.

E. B. QUACKENBUSH,
Attorney for O. W. Wittmer.

ALLEN, WINSTON & ALLEN,
Attorneys for T. S. Lane.

WARFIELD & WITHERSPOON,
Attorneys for David Ackerman, Stanley Hodgman and Augusta W. Howell.

State of Washington,
County of Spokane,—ss.

L. C. Ream, being first duly sworn, deposes and upon his oath says: I am one of the petitioners above-named; I have read the foregoing petition and the statements of fact therein contained are

true according to the best of my knowledge, information and belief.

L. C. REAM.

Subscribed and sworn to before me this 4th day of August, 1923.

[Seal] M. M. ELLIOTT,

Notary Public in and for the State of Washington, Residing at Spokane.

In the United States District Court for the Eastern District of Washington, Northern Division.

No. 3812—IN BANKRUPTCY.

In the Matter of IRVING WHITEHOUSE COMPANY,

Bankrupt.

Order on Review of Referee's Decision.

This cause came on regularly for hearing before the undersigned, one of the Judges of the above court, on the petition of the Trustee for a review of the order made by the Hon. Sidney H. Wentworth, Referee of this court, on the petitions of David Ackerman, Stanley Hodgman, L. C. Ream, Hazel Mowers, Mable Connor, H. E. Woodland, Oscar Lantor, Maud Mowers. Chas. Theis, Alexander Stephens, Augusta W. Howell, Thaddeus S. Lane and O. W. Wittmer, for an order directing the Trustee in Bankruptcy to deliver to said petitioners certain securities, or the proceeds real-

ized therefrom, the Trustee W. S. McCrea appearing by his attorneys Danson, Williams & Danson, the petitioners L. C. Ream, Hazel Mowers,, Mable Connor, H. E. Woodland and Maud Mowers appearing by their attorneys Graves, Kizer & Graves, the petitioner Oscar Lantor appearing by his attorney S. Edelstein, the petitioner Chas. Theis apearing by his attorney Fabian B. Dodds, the petitioner Alexander Stephens appearing by his attorneys McCarthy, Edge & Lantz, the petitioner O. W. Wittmer appearing by his attorney, E. B. Quackenbush, the petitioner Thaddeus S. Lane appearing by his attorneys Allen, Winston & Allen, and the petitioners David Ackerman, Stanley Hodgman and Augusta W. Howell appearing by their attorneys Wakefield & Witherspoon, and the court having heard the arguments and having taken the cause under advisement, and having heretofore, and on July 18, 1923, filed its decision in writing, and being now fully advised in the premises,

IT IS ORDERED, that the said order of the said Referee be, and the same is reversed and set aside and the Referee is directed to make computations and order of allowance as follows: From the indebtedness due from the bankrupt to E. F. Hutton & Co., for which the securities sold after August 3, 1921, were held as collateral, there be deducted $1,414, the amount realized from the sale of the securities owned by the bankrupt and to which the bankrupt's customers had no claim; that thereafter there be applied to the payment of the indebtedness

due to Hutton & Co. from the proceeds realized from the sale of all the remaining securities, a *pro rata* share from all such securities so far as necessary to the satisfaction of the Hutton & Co. claim. If the interest of the bankrupt in any particular security is not sufficient to pay the *pro rata* indebtedness of such security to Hutton & Co. the deficiency thereof be supplied from the interest of the owners of the remaining of such security, but if the interest of the bankrupt is sufficient to pay the *pro rata* indebtedness of such security then the balance of the remaining of the proceeds realized from the sale of each security be ordered paid to any petitioner owning such security, according to his ownership, and where there are several owners to a particular security, that the balance to the credit of such security be prorated according to such ownership, after deducting any indebtedness due from such owners for the purchase of such security.

IT IS FURTHER ORDERED, That none of the said petitioners are estopped from asserting their claim through having filed general claims.

Dated this 28th day of July, 1923.

JEREMIAH NETERER,
District Court Judge.

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3812.

In the Matter of IRVING WHITEHOUSE COMPANY,

Bankrupt.

Order Directing Delivery of Money to Petitioners.

In the petitions of David Ackerman, Stanley Hodgman, L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland, Oscar Lantor, Maud Mowers, Charles Theis, Alexander Stephens, Augusta W. Howell, Thaddeus S. Lane, O. W. Wittmer and Sidney H. Collins.

A consolidated hearing of the claims of the above petitioners was made before me on a stipulation of fact entered into between these petitioners and W. S. McCrea, as Trustee in Bankruptcy, the petitioners being represented by their respective counsel, and the Trustee by his, and from the record herein it appears that W. S. McCrea, as Trustee in Bankruptcy, now has in his possession and wrongfully withholds from the petitioners whose names are set out below the sum of Ten Thousand Four Hundred Sixty-five and 27/100 ($10,465.27) Dollars, which sum is composed of the proceeds of the sale of certain securities, many of which belonged to these petitioners; and that a notice has been duly published and an order duly entered to the effect that any person who had or

claimed to have any interest in this said fund should present his petition before the 5th day of February, 1923, or be estopped to set up any such claim; and that no persons other than the above petitioners have appeared in these proceedings; and that the aforesaid sum is insufficient to reimburse each petitioner in full for the loss sustained by the sale of his securities, but that the claim of O. W. Wittmer against this fund is inferior and subject to the claims of the other petitioners who are entitled to take priority over him in the distribution of said fund; and that the said fund now wrongfully withheld by the said W. S. McCrea from these petitioners should be distributed among them in the following manner, to wit:

David Ackerman	is entitled to the sum of	$1156.00
Stanley Hodgman	is entitled to the sum of	369.71
L. C. Ream	is entitled to the sum of	655.35
Hazel Mowers	is entitled to the sum of	1936.36
Mabel Connor	is entitled to the sum of	169.50
H. E. Woodland	is entitled to the sum of	509.50
Oscar Lantor	is entitled to the sum of	673.00
Maud Mowers	is entitled to the sum of	775.10
Thaddeus S. Lane	is entitled to the sum of	1519.32
Charles Theis	is entitled to the sum of	760.28
Augusta Howell	is entitled to the sum of	1172.91
Alexander Stephens	is entitled to the sum of	384.92
	Total	$10,081.95

It further appears that O. W. Wittmer is entitled to receive the balance remaining from such fund after the aforesaid sums have been distributed to the other petitioners. The amount he is, therefore, entitled to is $383.32.

It further appears that the proceeds of the sale of the securities belonging to Sidney H. Collins are not included in this fund and that therefore this petitioner is not entitled to any sum whatever from said fund.

WHEREFORE, IT IS CONSIDERED, ORDERED, ADJUDGED AND DECREED that said W. S. McCrea, as Trustee in Bankruptcy herein, deliver to the aforesaid petitioners the several sums set opposite their names and deliver to the said O. W. Wittmer the balance remaining over, to wit; the sum of $383.32.

Dated this 27th day of April, 1923.

SIDNEY H. WENTWORTH,
Referee in Bankruptcy.

Copy rec'd Aug. 7, 1923.

DANSON, WILLIAMS & DANSON,
Attys. for Trustee.

[Endorsed]: In Bankruptcy—No. ——. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Irving Whitehouse Company, a Corporation, Bankrupt. L. C. Ream et al., Petitioners, vs. W. S. McCrea, as Trustee in Bankruptcy etc., Respondent. Petition to Revise in Matter of Law.

United States Circuit Court of Appeals for the Ninth Circuit.

IN BANKRUPTCY—No. ——.

In the Matter of IRVING WHITEHOUSE COMPANY, a Corporation, Bankrupt.

L. C. REAM, HAZEL MOWERS, MABEL CONNOR, H. E. WOODLAND, MAUDE MOWERS, OSCAR LANTOR, CHARLES THEIS, ALEXANDER STEPHENS, O. W. WITTMER, T. S. LANE, DAVID ACKERMAN, STANLEY HODGMAN, AUGUSTA W. HOWELL,

Petitioners,

vs.

W. S. McCREA, as Trustee in Bankruptcy of Irving Whitehouse Company, a Corporation, Bankrupt,

Respondent.

Stipulation Re Petition for Revision.

IT IS STIPULATED by and between the parties hereto that the record made up on appeal in the above-entitled matter may be used and become a part of the proceedings under the petition to revise in matter of law filed herein, in case this Honorable Court should hold that the remedy is not by appeal, but by petition to revise in matter of law.

Dated this 7th day of August, 1923.

DANSON, WILLIAMS & DANSON,
Attorneys for Respondent.

GRAVES, KIZER & GRAVES,
Attorneys for L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland, and Maude Mowers.

S. EDELSTEIN,
Attorney for Oscar Lantor.

FABIAN B. DODDS,
Attorney for Charles Theis.

McCARTHY, EDGE & LANTZ,
Attorneys for Alexander Stephens.

E. B. QUACKENBUSH,
Attorney for O. W. Wittmer,

ALLEN, WINSTON & ALLEN,
Attorneys for T. S. Lane.

WAKEFIELD & WITHERSPOON,
Attorney for David Ackerman, Stanley Hodgman and Augusta W. Howell.

[Endorsed]: In Bankruptcy—No. ——. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Irving Whitehouse Company, a Corporation, Bankrupt. L. C. Ream et al., Petitioners, vs. W. S. McCrea, as Trustee in Bankruptcy etc., Respondent. Stipulation.

United States Circuit Court of Appeals for Ninth Circuit.

IN BANKRUPTCY—No. ——.

In the Matter of IRVING WHITEHOUSE COMPANY, a Corporation, Bankrupt.

L. C. REAM, HAZEL MOWERS, MABEL CONNOR, H. E. WOODLAND, MAUDE MOWERS, OSCAR LANTOR, CHARLES THEIS, ALEXANDER STEPHENS, O. W. WITTMER, T. S. LANE, DAVID ACKERMAN, STANLEY HODGMAN, AUGUSTA W. HOWELL,

Petitioners,

vs.

W. S. McCREA, as Trustee in Bankruptcy of Irving Whitehouse Company, a Corporation, Bankrupt,

Respondent.

Notice of Filing Petition for Revision.

To W. S. McCrea, as Trustee in Bankruptcy of Irving Whitehouse Company, a Corporation, Bankrupt, and to Danson, Williams & Danson, your attorneys:

YOU AND EACH OF YOU will please take notice that on the 13th day of August, A. D. 1923 a certain petition for revision under Section 24B of the Bankruptcy Act of Congress approved July 1, 1898, of certain proceedings of the District Court of the United States for the Eastern District of

Washington, Northern Division (a certified copy of which petition accompanies this notice and is served upon you herewith) was duly filed in said Circuit Court of Appeals; and the above mentioned matter is now pending in said court and, pursuant to the practice and agreeably to the stipulation filed will be regularly assigned for hearing or submission during the Seattle Session of said Court to be held in the City of Seattle, in the State of Washington, commencing on Monday, September 17th, 1923.

WITNESS THE HONORABLE THE JUDGES of the United States Circuit Court of Appeals for the Ninth Circuit, and the seal of said Circuit Court of Appeals at the city of San Francisco, in the State of California, this 13th day of August, A. D. 1923.

[Seal] F. D. MONCKTON,
Clerk,
By Paul P. O'Brien,
Deputy Clerk.

[Endorsed]: No. 4075. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Irving Whitehouse Co., a Corporation, Bankrupt. Notice of Filing Petition for Revision. Filed Aug. 20, 1923, F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

Copy of within notice of filing petition for revision accepted this 16th day of August, 1923.

DANSON, WILLIAMS & DANSON,
Attorneys for Trustee.

[Endorsed]: No. 4075. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Irving Whitehouse Company, a Corporation, Bankrupt. L. C. Ream, Hazel Mowers, Mabel Connor, H. E. Woodland, Maude Mowers, Oscar Lantor, Charles Theis, Alexander Stephens, O. W. Wittmer, T. S. Lane, David Ackerman, Stanley Hodgman, Augusta W. Howell, Petitioners, vs. W. S. McCrea, as Trustee in Bankruptcy of Irving Whitehouse Company, a Corporation, Bankrupt, Respondent. Petition for Revision. Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, an Order of the United States District Court for the Eastern District of Washington, Northern Division.

Filed August 13, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.